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U. S. DEPARTMENT OF AGRICULTURE

WAR FOOD ADMINISTRATION

[FDO 88]

PART 1405—FRUITS AND VEGETABLES

APPLES

The fulfillment of the requirements for the defense of the United States will result in a shortage in the supply of apples for defense, for private account, and for export; and the following order is deemed necessary and appropriate in the public interest and to promote the national defense:

§ 1405.40 *Restrictions relative to apples*—(a) *Definitions*. When used in this order, unless otherwise distinctly expressed or manifestly incompatible with the intent hereof:

(1) The term "apples" means and includes, except all varieties of crab apples and of Lady apples, (i) all apples grown in the State of Washington, if such apples meet the minimum requirements of fancy grade, or higher grades, as specified in the "Washington Standards for Apples," promulgated May 1939, and are located either in the State of Washington or in the State of Oregon; (ii) all apples grown in the State of Oregon, if such apples meet the minimum requirements of fancy grade, or higher grades, as specified in the "Oregon Standards for Apples," promulgated on July 28, 1937, reissued July 31, 1941, and are located either in the State of Oregon or in the State of Washington.

(2) The term "person" means any individual, partnership, association, business trust, corporation, or any organized group of persons, whether incorporated or not.

(3) The term "Director" means the Director of Food Distribution, War Food Administration.

(4) The term "governmental agency" means (i) the Armed Services of the United States (excluding, for the purposes of this order, the United States Army post exchanges, the United States Navy ship service departments, and the United States Marine Corps post exchanges); (ii) the War Food Administration, including, but not being limited to, the Federal Surplus Commodities Corporation; (iii) the War Shipping Administration; and (iv) any other instrumentality or agency designated by the War Food Administrator.

(5) The term "Armed Services of the United States" means the Army, the Navy, the Marine Corps, or the Coast Guard of the United States.

(6) The term "Order Administrator" means the person designated by the Director to serve as Order Administrator or alternate for the Order Administrator, pursuant to the provisions of this order.

(b) *Restrictions*. (1) Each person owning 500 bushels, or more, of apples, at or after the effective time of this order, shall immediately set aside or cause to be set aside 15 percent of each variety of such apples.

(2) All apples required to be set aside pursuant to the provisions of this order shall be of the sizes known as 88's to 175's, inclusive, more specifically defined as the number of apples of fairly uniform size which are customarily wrapped and place-packed in a closed container, the inside measurements of which are 18 inches in length, 11½ inches in width, and 10½ inches in depth: *Provided*, That in the event any person required to set aside apples, as aforesaid, does not own a sufficient quantity of such apples meeting the size specifications hereof, he shall set aside, as aforesaid, except as hereinafter provided in (b) (3), all apples of the sizes specified herein which are owned by him.

(3) Any quantity of apples which was included in a lot of apples with respect to which the requisite percentage of apples has been set aside, as aforesaid, shall thereafter, even in the hands of a subsequent owner, be free from the set-aside requirements hereof.

(4) No person shall sell or deliver apples, set aside as aforesaid, except to a governmental agency, and such apples shall be packed in a manner acceptable to such governmental agency.

(5) The Director may, from time to time, if he deems that such will tend to effectuate the purposes of this order, issue a written release for any lot of apples, set aside as aforesaid, any other provision of this order to the contrary, notwithstanding. Any person may purchase, accept delivery of, or use any apples released, as aforesaid, by the Director.

(6) Each person subject to the provisions of this order shall, within seven calendar days following the effective date hereof, correctly complete and forward to Deputy Order Administrator,

Food Distribution Order No. 88, 210 Mayer Building, Portland, Oregon, Form No. 88-1, in which he shall specify, among other things, the location, quantity, and variety of all apples which are owned by such person and are subject to this order.

(c) *Contracts*. The provisions of this order, or of any orders or regulations issued in pursuance hereof, shall be observed without regard to contracts heretofore or hereafter entered into, or any rights accrued, or payments made thereunder.

(d) *Audits and inspections*. The Director shall be entitled to make such audit or inspection of any person's books, records and other writings, premises or stocks of apples, and to make such investigations as may be necessary or appropriate, in the discretion of the Director, for the enforcement or administration of the provisions of this order.

(e) *Records and reports*. (1) The Director shall be entitled to obtain such information from, and require such reports and the keeping of such records by, any person, as may be necessary or appropriate, in the discretion of the Director, for the enforcement or administration of the provisions of this order.

(2) Every person subject to this order shall maintain, for at least two years, or for such period of time as the Director may designate, an accurate record of his transactions in apples.

(3) The record-keeping and reporting requirements of this order have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942. Subsequent record-keeping or reporting requirements will be subject to the approval of the Bureau of the Budget pursuant to the Federal Reports Act of 1942.

(f) *Provisions of Food Distribution Regulation No. 2 and Food Distribution Regulation No. 3 not applicable*. The provisions of Food Distribution Regulation No. 2 (8 F.R. 7523), issued June 4, 1943, by the War Food Administrator, and Food Distribution Regulation No. 3 (8 F.R. 13880), issued October 8, 1943, by the War Food Administrator, effective November 15, 1943, shall not be applicable to this order.

(g) *Relevancy to Food Distribution Order No. 69*. Apples heretofore or hereafter released from regulation under

Food Distribution Order No. 69 (8 F.R. 10477) are free from regulation under this order.

(h) *Designation of Order Administrator and alternate.* The Director shall designate two employees of the United States Department of Agriculture to serve as Order Administrator and alternate for the Order Administrator, respectively. Whenever the Order Administrator is absent or unable to act, the alternate shall act as Order Administrator.

(i) *Petition for relief from hardship.* Any person affected by this order who considers that compliance herewith would work an exceptional or unreasonable hardship on him may file a petition for relief with the Order Administrator. Such petition shall be addressed to Order Administrator, Food Distribution Order No. 88, Fruit and Vegetable Branch, Food Distribution Administration, War Food Administration, Washington 25, D. C. Petition for such relief shall be in writing and shall set forth all pertinent facts and the nature of the relief sought. If such person is dissatisfied with the action taken by the

Order Administrator on the petition, by requesting the Order Administrator therefor, he shall obtain a review of such action by the Director. The Director may, after said review, take such action as he deems appropriate, and such action shall be final.

(j) *Violations.* The War Food Administrator may, by suspension order, prohibit any person who violates any provision of this order from receiving, making any deliveries of, or using apples, or any other material subject to priority or allocation control by the War Food Administrator, and may recommend that any such person be prohibited from receiving, making any deliveries of, or using materials subject to the priority or allocation control of other governmental agencies. In addition, any person who wilfully violates any provision of this order is guilty of a crime and may be prosecuted under any and all applicable laws. Further, civil action may be instituted to enforce any liability or duty created by, or to enjoin any violation of, any provision of this order.

(k) *Delegation of authority.* The administration of this order and the

powers vested in the War Food Administrator, insofar as such powers relate to the administration of this order, are hereby delegated to the Director. The Director is authorized to redelegate to any employee of the United States Department of Agriculture any or all of the authority vested in him by this order.

(l) *Communications.* All reports required to be filed and all communications concerning this order shall, unless otherwise specified, be addressed to Order Administrator, Food Distribution Order No. 88, Fruit and Vegetable Branch, Food Distribution Administration, War Food Administration, Washington 25, D. C., Ref. FDO 88.

(m) *Effective date.* This order shall become effective at 12:01 a. m., P. w. t., November 6, 1943.

(E.O. 9280, 7 F.R. 10179; E.O. 9322, 8 F.R. 3807; E.O. 9334, 8 F.R. 5423; E.O. 9332, 8 F.R. 14783)

Issued this 5th day of November 1943.

MARVIN JONES,
War Food Administrator.

Press Release, Immediate:
Friday, November 5, 1943.

Approximately 2,000,000 bushels of State Fancy or higher grade apples in Washington or Oregon have been ordered set aside by the War Food Administration to meet the requirements of the Armed Services for fresh apples.

The set-aside regulations, contained in Food Distribution Order 88 requires all persons who own—on or after November 6—500 bushels or more of apples grown and located in either of the two States, which meet the respective State standards for Fancy or higher grades, to set aside 15 percent of each variety of these apples for purchase by the Armed Services or any other governmental agency specified in the order.

Besides meeting the standards for State Fancy or higher grades, apples set-aside under the order also must be of sizes 88 to 175 inclusive, as customarily packed in the Standard Northwestern apple box (a closed container having inside dimensions of 10½" x 11½" x 18"). The apples set aside must be packed in a manner acceptable to the Army, or the particular governmental agency involved.

The order further requires all persons subject to its provisions to complete and file Form 88-1 by November 13 with the Deputy Order Administrator, Food Distribution Order 88, Food Distribution Administration, 210 Mayer Bldg., Portland, Oreg. This form is to enable the F. D. A. to determine the location, quantity and variety of all apples restricted under F. D. O. 88.

Person desiring copies of Form 88-1 may secure them from the following F. D. A. offices: 210 Mayer Bldg., Portland 5, Oreg.; 821 Market St., San Francisco 3, Calif.; 5 South Wabash Ave., Chicago 3, Ill.; 150 Broadway, New York 7, N. Y.; and Food Distribution Administration, War Food Administration, U. S. Department of Agriculture, Ref: Order Administrator, Food Distribution Order 88, Washington 25, D. C.

Army procurement will be handled by L. E. Davis, Quartermaster Market Center, 1003 Western Avenue, Seattle, Wash. The Quartermaster Market Center of the Army will purchase apples for use by the Navy, Marine Corps, and Coast Guard. Persons desiring to sell apples to the Government should communicate with this Army procurement office.